

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE:

B-221539

DATE: May 8, 1986

MATTER OF:

Patrick A. Bianchi, M.D.

DIGEST:

1. Agency properly considered proposal received by extended closing date for receipt of offers, even though such proposal had not been received by an earlier closing date that was extended by an amendment to the solicitation, since it is the actual final closing date that governs.
2. Whether awardee will perform contract for radiological services with staff with credentials required by Request for Proposals pertains to the affirmative determination of that firm's responsibility, which the General Accounting Office will not review absent a showing that contracting officials may have acted fraudulently or in bad faith or an allegation that agency misapplied definitive responsibility criteria in solicitation.

Patrick A. Bianchi, M.D., protests the award of a contract to Sterling Medical Associates under request for proposals (RFP) No. F04699-85-R-0185, issued by McClellan Air Force Base, California, for radiology services to be performed at its clinic. Bianchi alleges that his proposal was the only one timely received and that Sterling lacks the credentials necessary for contract performance.

The protest is denied in part and dismissed in part.

The solicitation was issued on August 23, 1985, to procure radiology services at the Air Force Clinic, McClellan Air Force Base. September 24 was the scheduled date for receipt of initial proposals. Prior to that date, the agency determined that it had failed to include a government-furnished equipment clause in the specification and that the using activity needed to revise the statement of work to reflect its actual needs. On that basis, the Air Force issued amendments 0001, 0002 and 0003, extending the

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closing date from September 24 to December 2, then to December 13 and 20, 1985, respectively. Amendment 0004 was issued on December 11, incorporating, among other things, the revised statement of work into the RFP.

The protester submitted a proposal in response to this solicitation on December 2, 1985. When he learned during a telephone conversation with procurement officials on December 3 that the closing date for receipt of initial proposals had been extended, Bianchi requested that his unopened proposal be returned.

The Air Force received price proposals from Bianchi and Sterling by December 20. Award was made to Sterling, the low offeror, on December 30, 1985, and we received Bianchi's protest on January 2, 1986.

Bianchi first contends that Sterling's proposal should have been rejected as late because it was not received prior to the December 2 closing date. Bianchi alleges that his proposal was the only one received by December 2 and, therefore, he should have been awarded the contract. Inherent in this protest ground is a challenge to the validity of the two subsequent extensions of the closing date for receipt of initial proposals.

The agency states that the decision to extend the closing date was justified based on the contracting officer's discovery, subsequent to the issuance of the solicitation, that it was necessary to make changes in the statement of work, insert a required clause that was inadvertently omitted, and revise the credentials requirement for the contractor's personnel. Additionally, the agency states that it encountered delays in "clarifying and changing" the specification requirements.

In its comments on the agency report the protester argues that it was unreasonable for the agency to delay the closing date for approximately 3-1/2 months for changes to the specifications which, in his opinion, were "very routine and would not take much time or effort to incorporate in the Request for Proposals."

The agency's consideration of Sterling's proposal was legally correct. It is evident that December 2 was not the final closing date for receipt of initial proposals. December 20 was ultimately the date set for receipt of initial proposals and Sterling's proposal was received by that date. Although the Air Force originally had

established an earlier date for receipt of proposals, contracting officers have broad discretion in deciding whether the closing date should be extended. See, e.g., MISSO Services Corp., 64 Comp. Gen. 4 (1984), 84-2 C.P.D. ¶ 383; see also Federal Acquisition Regulation, 48 C.F.R. § 15.410 (1984), which clearly authorizes the amendment of an RFP when the contracting officer determines that it is necessary to change the closing date for receipt of proposals. Such a change was necessary here because the specifications, as originally issued, did not reflect the actual needs of the user. While the Air Force did not accomplish this with the speed with which the protester would have liked, this circumstance provides no basis for us to conclude that Sterling's proposal was improperly considered.^{1/} We therefore deny the protest on this issue.

Bianchi's second basis for protest concerns the following provision which appears in the RFP's statement of work, as amended:

"1.2 Personnel The Contractor shall insure that the services are performed by a MD or DO who is Board Eligible or Board Certified by the American Board [of] Radiology or the American Osteopat[h]ic Board of Radiology." (Emphasis in the original.)

The protester contends that Sterling's physician does not possess the required credentials.

In this procurement, offerors were only required to submit a price for performing the radiology services, which were described in the RFP's specifications. No technical proposals were submitted and offerors did not have to identify in their proposals the staff they proposed to use or describe their qualifications.

Whether Sterling could or would perform the contract with a staff possessing the credentials required by the RFP relates to that firm's responsibility as a prospective

^{1/} Since it appears that Bianchi's proposal was the only one submitted as of December 2, his argument, in effect, is that award should be made to him. We note, however, that Bianchi's original proposal was returned to him, unopened, at his request and has been in his possession ever since. We do not believe an offeror can have it both ways, that is, insist upon the return of his unopened proposal yet expect the government to make award on the basis of that document, which it has never seen.

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contractor, which the contracting officer decided in the affirmative. We do not review an affirmative determination of a prospective contractor's responsibility absent a showing that the contracting officer may have acted fraudulently or in bad faith, or an allegation that definitive responsibility criteria contained in the solicitation were misapplied. Sylvan Service Corp., B-219077, June 17, 1985, 85-1 C.P.D. ¶ 694. The protester has made no showing of fraud or bad faith, and the specification performance requirement at issue is not a definitive criterion of responsibility.

The protest is denied in part and dismissed in part.

for Seymour E. Van
Harry R. Van Cleve
General Counsel